CONTENTS.

151438—19——1

CASES CITED.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

STRATHEARN STEAMSHIP COMPANY, LIMITED, v. JOHN DILLON. } No. 373.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE.

STATEMENT OF THE CASE.

This case involves the construction and validity of section 4 of the Seamen's Act of March 4, 1915, 38 Stat. 1164, Comp. Stat. (1916), Sec. 8322. It was before this court at the last term, upon a certificate of said Circuit Court of Appeals, and was remanded without opinion because of insufficiency of the certificate. 228 U. S. 182. The main question is whether said section 4 applies to foreign seamen on foreign vessels and whether the conditions contained in said section so construed are valid. This brief is filed by the United States as *amicus curiae* in accordance with leave obtained, because of the public interest in the questions involved.

THE STATUTE.

Section 4 of the Seamen's Act provides as follows:

That section forty-five hundred and thirty of the Revised Statutes of the United States be, and is hereby, amended to read as follows:

SEC. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: *Provided*, Such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall then be due him, as provided in section forty-five hundred and twenty nine of the Revised Statutes: *Provided further*, That notwithstanding any release signed by any seaman under section forty-five hundred and fifty-two of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take such action as justice shall require: *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.

THE FACTS.

John Dillon, a British subject, shipped at Liverpool on May 8, 1916, on the British ship *Strathearn*. The shipping articles, signed at Liverpool, provided for a voyage of not exceeding three years' duration, commencing at Liverpool and proceeding thence to Newport News or other ports, and trading in any rotation, and to end at a port in the United Kingdom. The only provision of said articles relating to the time or place of payment of wages was to the effect that "no cash shall be advanced aboard or liberty granted other than at the pleasure of the master." (Rec. 13.)

The agreement was valid according to the laws of Great Britain.

On arrival of the ship in Florida, after demand and refusal, this libel was filed for one-half of the wages earned. The District Court dismissed the libel. (239 Fed. 583.) Upon the dismissal of the certificate by this court, the case was heard by the Circuit Court of Appeals and the decision of the District Court reversed, the Circuit Court of Appeals holding that section 4 of the Seamen's Act was constitutional and that the seaman was entitled to maintain the libel. (Rec. 55–59.)

ARGUMENT.

FIRST PART—CONSTRUCTION OF THE ACT.

I.

The purpose sought to be accomplished was to equalize on foreign vessels the burdens placed by American law, in its care for American seamen, upon the American merchant marine, by making such foreign vessels seeking American ports subject to regulations affecting American vessels.

At the time of the passage of the Seamen's Act, rehabilitation of the national merchant marine had long been a public demand. In his annual message to Congress of December 7, 1903, the President urged the appointment of a commission to investigate and report "what legislation is desirable or necessary for the development of the American merchant marine and American commerce, and incidentally of a national ocean mail service of adequate auxiliary naval cruisers and naval reserves." The Merchant Marine Commission was created by Act of April 28, 1904 (33 Stat. 561), which held elaborate investigations and reported to Congress January 4, 1905. (39 Cong. Rec., part 1, pp. 437–439; S. Rep. No. 2755, 58th Cong., 3d sess.)

In the early period of the Nation's life the American marine occupied a proud position. In 1821 and 1826 the percentage of imports and exports carried in American vessels was 88.7 per cent and 92.3 per cent, respectively. In 1870 it had declined to 35.6 per cent,

and in 1913–14 it was 10.1 per cent and 9.7 per cent, respectively. (Annual Report Commissioner of Navigation, 1915, p. 159.) As stated in the report of the American Merchant Marine Commission, "The condition of the remnant of the ocean fleet of the United States is therefore absolutely desperate * * *. Our war fleets in the Mediterranean and South American waters scarcely see a United States merchant flag from one year to another." (Report, *supra*, pp. vi, vii.) We had long ceased to be a seafaring people.

The dangers incident were pointed out. Lack of a merchant marine means the want of the naval reserve and transport service indispensable in time of war. The Merchant Marine Commission estimated, moreover, that $150,000,000 was paid annually to foreign shipping for freight, mail, and passenger service (p. 5). Also, the lack "of marine delivery wagons" to South America was held to be a prime cause of our inadequate commerce with South America (p. 6).

The decline of the merchant marine was laid to many causes. It was everywhere recognized that the American maritime industry suffered from (1) a higher cost of construction of ships, and (2) a higher cost of operation, due primarily to higher wage standards. The projects to overcome both handicaps have been many. Admiralty subventions have been proposed, as well as navigation bounties and construction bounties. A mail subsidy project had been pro-

vided by act of March 3, 1891, ch. 519, 26 Stat. 830. The Merchant Marine Commission reported in 1905 in favor of subventions. The minority proposed the imposition of discriminating duties. The former project failed on account of public sentiment against subsidies. The latter was attempted in 1913 by the Sixty-third Congress, but on account of prejudice against the disruption of treaty relations likewise came to naught. (Sec. IV J, subsec. 7 of the act of Oct. 3, 1913, ch. 16, 38 Stat. 114, 196; see *Five Per Cent Discount cases*, 243 U. S. 97.)

An attempt to remove the handicap of higher cost of labor was made by act of June 26, 1884, c. 121, 23 Stat. 53, entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes." Section 20 provided that American vessels could engage seamen in foreign ports to serve for round trips without being required to reship them in ports of the United States. The effort was to reduce the standard of American seamen's wages to that of the foreign competitors. It failed of the desired results. In the act of March 4, 1915, one purpose was to remove this handicap, but by the opposite method of seeking to raise standards to the American level.

II.

The legislative purpose was by limiting the enforcement of all wage contracts, wherever made, by all vessels while in our ports, to equalize the relations between domestic vessels and foreign vessels visiting our ports as to their seamen.

(A) *Meaning of the act.*

Said section in terms applies to "every seaman" on a vessel of the United States. "Every seaman" clearly does not mean "American-born seaman," but seamen of every nationality on an American ship. Had Congress intended to limit the section to American seamen, it would not have used the broad term "every seaman."

But even if the section were to be restricted to American seamen, it is clear that foreign seamen employed on American ships are "American seamen." *The Laura M. Lunt* (D. C., E. D. La.), 170 Fed. 204. Hence the seamen covered by every part of the act are not limited to American citizens or residents.

Having thus provided in the body of the section for "every seaman" on a vessel of the United States, Congress added a proviso declaring that the section shall apply "to seamen on foreign vessels while in the harbors of the United States." There being no limitation on the word "seamen" as used in the proviso, it must be taken to mean the same class of persons as are designated as "every seaman" in the body of the section; for, if the word "seaman" as so used did not apply to all, it would not have the same

meaning as elsewhere. The effect of the proviso, therefore, is to extend the benefits of the section to "every seaman" on a foreign vessel in a port of the United States, regardless of nationality.

Moreover, the unqualified language of the proviso unmistakably indicates a purpose on the part of Congress that foreign seamen shall share in the benefits conferred, for the reason that the words "foreign vessel" carry with them the implication that such vessels are manned by foreigners, and it is inconceivable that Congress should have written these words into the law, without limitation, if it had intended to embrace only American seamen.

Coming now to the contention that the proviso relates only to contracts made in the United States, or to so much of their performance as occurs here, we make the same answer as to the first contention, namely, that had such been the purpose of the acts Congress would have qualified the language employed so as to restrain its plain meaning. Nowhere in the section, or in the act as a whole, is any such limitation to be found, and to read it in by construction would do violence to the language employed.

The design of the law is that it shall operate while foreign vessels are within our jurisdiction; while the foreign seamen, as "wards in admiralty," are within the care of our admiralty courts. The construction, contended for, would impair the meaning of several important provisions of the act. Under such construction no necessity would exist for opening our courts to seamen contracting in our ports with mas-

ter of vessels, so long as here. Nor would there be any need to provide for the abrogation of treaties.

Again, section 16, providing against arrest and imprisonment for desertion, expressly applies to foreign seamen. The section now under consideration was designed, among other things, to render said section effective. (*Infra*, pp. 17–19.) It is patent that a seaman, without funds to provide for his immediate necessities, would be under practical compulsion to remain with the ship. The effect of construing section 4 to apply only to American seamen, or to seamen shipping in American ports, would be, therefore, materially to restrict the beneficent provisions of section 16, designed to prevent the holding of seamen in involuntary servitude while in the jurisdiction of the United States.

The argument that the title of the act restricts its benefits to American seamen does not militate against the construction here insisted on even if it is applicable.

While the application of the act here contended for will benefit foreign seamen as well as American, this is essential in order to make effective such benefits for American seamen and to protect the American merchant marine. For if foreign ships manned by foreign crews could come into American ports free from liability to respond to the demands of the sailors for wages, shippers and ship brokers would give preference to foreign charters, and the masters would discriminate against American seamen. Thus it would come about that instead of benefiting American sea-

men and American shipping, the act would be but another hindrance.

Therefore, to make the act effective for the benefit of American seamen and the protection of American ships, it is provided that masters of foreign vessels, while completely at rest in our ports, and enjoying our hospitality and the protection of our laws, shall be under like liability with the masters of American vessels to respond to the demands of their crews for one-half of their accrued wages.

There is nothing in the cases of *Sandberg* v. *McDonald*, 248 U. S. 185, or *Neilson* v. *Rhine Shipping Co.* and *Hardy* v. *Shepard & Morse Lumber Co.*, 248 U. S. 205, which militates against this conclusion. Indeed, the contention of the claimant in each case proceeded on the assumption that Section 4 applied, and dealt *alone* with what credits they were entitled to set up in responding to the seamen's demands, under Section 11.

The opinion in the first case recites (pp. 191–192):

> On February 22 (1917) libelants demanded of the master of the ship payment of one-half of the wages earned by them to that date. The master then paid them a sum which, with the cash paid them, and the price of articles purchased as stated above, together with the advances made in Liverpool, equaled or exceeded the one-half of the wages then earned by each of them from the commencement of his service for the ship. It was less, however, than such one-half wages if the advances at Liverpool had not been included in the credits.

And states the question to be decided as follows (p. 192):

> Under the foregoing statement of the facts * * * was the master entitled to make deduction from the seamen's pay of the advancements made at Liverpool?

In the other cases mentioned, American vessels shipped sailors at Buenos Aires and by libelants' directions advanced one month's pay. This was the custom of the port and was there lawful; without so doing the vessels could not have obtained full crews. At the end of the voyage the seamen were paid, deduction being made of the advances, and they thereafter sued for the amount so deducted.

The only question decided in those cases is that advances made outside of the United States, under contracts valid where made, and where the advances are made, are not within the prohibition of the statute of the United States against such advances; and that the reference to foreign vessels therein applies only to their acts while in the United States and does not relate to completed transactions had elsewhere, where they are legal.

But the section now before the court relates to the rights of seamen on foreign vessels while in the jurisdiction of the United States. It creates a right to be exercised in its territory and to be enforced in its courts. It declares that no contract, wherever made, which contravenes it, shall have any force within the United States.

(B) *Purpose of the act.*

The rights of seamen on American vessels to demand payment of wages at frequent intervals was deemed essential to their welfare; but to so provide while leaving foreign vessels free to seek our ports with and for cargoes with crews having no such rights would have made such foreign ships the carriers sought for by charterers and would have placed American bottoms at great disadvantage. The welfare of the crews on American ships could only be thus provided for, if *all ships* in our ports were subjected to like regulations.

Section 16 of the Seamen's Act abolished the remedy of arrest and imprisonment for desertion of foreign seamen, and regardless of the contract made abroad, the treaties requiring its specific performance were abrogated.

But such a plan would prove entirely abortive if the foreign seaman in our ports were unable to obtain sufficient money to carry him until he secured his next job and were compelled by his immediate necessities for food and lodging to remain with the foreign ship. The purpose of the proviso to section 4 is to provide that sum of money, and make said section apply in all cases, and also to prevent its abrogation by contract, no matter where made.

Section 4 is an amendment to section 4530 of the Revised Statutes, as amended by section 5 of the act of December 21, 1898, 30 Stat. 756 (see Comp. Stat. (1916), sec. 8322). Said act of December 21, 1898, provided for payment to the seaman of half

the wages due him at every port where the vessel unloads or delivers cargo "unless the contrary be expressly stipulated in the contract." In the present act the quoted clause was stricken out and a proviso added as follows:

> *And provided further*, That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement.

The language is not susceptible of a contrary interpretation. It would have, practically, no room for operation if limited to the case of contracts by foreign seamen executed in the United States. Foreign seamen on foreign vessels are usually shipped abroad, and the cases would be few indeed of contracts made in ports of the United States for a return voyage to our shores. The same reasons forbid an interpretation which would limit the operation of the section to American seamen.

III.

The deliberate intent to cover contracts of foreign seamen made abroad is shown by the committee reports and the legislative history of the act.

The proceedings in Congress show that the proviso covering seamen on foreign vessels was added for the very purpose of aiding the American merchant marine—a purpose which fails of accomplishment if all foreign seamen, or all seamen on foreign ships who have made contracts at low wages, and enter

American ports, are not entitled in our harbors to demand half of their wages to enable them to seek other employment. House Report No. 645 (62d Cong., 2d sess.), which accompanied H. R. 23673, reported favorably a bill in which section 3 was in the language of section 4 of the present Seamen's Act. The favorable majority report stated (pp. 7–8):

> Two things are essential to the building up of our merchant marine; one is the creating of a condition where the initial cost of the vessel is as low as that of the foreign vessel and the other is an equalization of the operating expenses.
>
> This bill will tend to equalize the operating expenses. Under existing laws men may be and are employed at the ports where the lowest standard of living and wages obtain. The wages in foreign ports are lower than they are in the ports of the United States; hence the operating expenses of a foreign vessel are lower than the operating expenses of an American vessel. It is not proposed to prevent vessels from employing seamen in ports where they can secure them cheapest, but it is proposed by this bill to give the seamen the right to leave the ship when in a safe harbor, and in time this will result in foreign seamen engaged on vessels coming into ports of the United States being paid the same wages as obtain here, as a means of retaining their crews for the return voyage. That will equalize the cost of operation, so that vessels of the United States will not be placed at a disadvantage.
>
> * * * * *

> Section 3 amends present law by striking out the following: "Unless the contrary be expressly stipulated in the contract" and inserting in its place as follows: "and all stipulations to the contrary shall be held as void." The section thus amended gives the seaman the right to demand one-half the wages due him in any port, notwithstanding any contract to the contrary, and extends its application to seamen on foreign vessels while in American harbors, and the whole section becomes part of the means by which the cost of operation of all vessels taking cargo out of any American port may be equalized.

That the statute was intended to affect foreign contracts is evidenced by the minority report which, *inter alia*, objected to the legislation on the ground that the statute affected the enforcement of contracts made abroad which were valid where made.

Definite language is used also in the favorable House report accompanying S. 136, which became the seamen's law (H. Rept. No. 852, 63d Cong., 2d sess.), and a quotation is made from the House report above cited.

The legislative history of the act is confirmatory. Section 3 of H. R. 23673, Sixty-second Congress, second session, was presented to the House by Mr. Wilson of Pennsylvania, on April 23, 1912 (48 Cong. Rec. 5242). Opposition developed on the ground that it was not in accordance with comity and was not good policy thus to affect foreign contracts of strangers who desire to trade with us (48 Cong. Rec. 9259).

An amendment was offered, striking out the proviso with reference to the foreign seamen (48 Cong. Rec. 9502, 9503.) The difference in the wages of American seamen from British seamen, amounting to 16 to 20 per cent, was, however, cited (48 Cong. Rec. 9435; see also Report Commissioner Navigation, 1906, pp. 64, 92), and it was said the section would have the effect of raising wages to the American level and equalizing labor cost of operation of foreign and American boats (48 Cong. Rec. 9259, 9429, 9431, 9432, 9434, 9435). So the amendment was rejected by the House (48 Cong. Rec. 9502, 9503).

In the third session of the Sixty-second Congress on February 26, 1913, Mr. Burton presented to the Senate from the Committee on Commerce a substitute for H. R. 23673 which struck out the proviso that the act should apply to seamen on foreign vessels while in the harbors of the United States, and provided instead as follows:

> This section shall apply to seamen on foreign vessels owned in major part by American citizens, corporations, or holding companies when such vessels are in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement (49 Cong. Rec., pt. 5, p. 4567).

In presenting the report Mr. Burton said:

> * * * we do not believe that we have any right to interfere with the management of foreign ships on articles signed abroad.

The Senate committee substitute was passed by both Houses, but the President did not sign the bill, so it failed to become law (49 Cong. Rec. 4588, 4806, 4854).

In the next Congress, the Sixty-third, however, sentiment changed. The act was reported in the broad terms as finally passed. The prevailing sentiment was expressed by Mr. Fletcher, who was acting chairman of the Senate committee in charge of the bill, as follows (50 Cong. Rec. 5749):

> First, Senate bill 136 permits seamen on foreign vessels to leave their vessels in ports of the United States; that was one great thing to be worked out; second, it permits seamen to draw one-half of the pay due them in any port where the vessel lies or delivers cargo, making this section applicable to foreign vessels while they are within the jurisdiction of our laws; * * *
>
> The right to one-half the earned wages at a stopping place on a voyage would seem to be reasonable. It would not induce a sailor to leave a ship when he was being decently treated and fairly compensated to have the privilege of quitting and collecting only one-half of what he had earned. On the other hand, if the sailor is maltreated or for sufficient reason he quits the vessel, perhaps in a strange land, he should at least have half the wages he has earned in cash. The forfeiture of the other half would seem to be ample allowance by way of liquidated damages for breach of his contract.

See also 52 Cong. Rec. 4646, as follows:

> Mr. HARDY. We are struggling to build up an American merchant marine. If you do not have rules that restrict competitors of the American merchant marine to the full extent and just as you restrict the American merchant marine, you never can have an American merchant marine. The real milk in the coconut seems to be this. * * * A seaman comes from Naples here on a low wage. When he gets into the port of New York, he is dissatisfied. He has been out a month, the ship is safe in port, and some wages are due him. The shipmaster, fearing that perhaps he will not return, will not give him a dollar. He can not go out in New York and pay for a night's lodging or for a meal. Had you not just as well have the law say, "We will arrest him and put him back," as to have the law say that when he gets to New York he can not get a dollar or a dime of the wages due him simply because he has contracted that way across the water? We provide here that when these men come to our ports they shall be entitled to demand half the wages earned, and if refused to go to our courts and sue for one-half of the wages due them. Mark you, we do not encourage the seamen to desert, and we make him lose all he leaves—one-half his wages and his clothing and property on board the ship—but we give him a little mite, so that he may buy a night's lodging or pay for a breakfast.
>
> * * * We want to build up an American merchant marine. We want to put the American shipowner on the seas governed by the

same rules, subject to the same restrictions that the foreign shipowner is under; no more, no less, and this bill in addition to striking the shackles from the limbs of the seaman places our shipowner on the ocean on equal terms with the shipowner of any other nation with one exception, and that is that he may have to pay more for his vessel, but if it is one in the foreign trade only he gets his vessel on equal terms. Then when you put two vessels under different flags, plowing the same waters, and the seaman is free, the seamen of those two vessels will receive the same wages because the seamen will go to where they can get higher wages. But if you shackle them, if you say we will arrest you if you desert, or we will hold you to your ship by the pangs of your stomach, or we will not let you sleep, we will not let you eat, we will not give you anything you have earned if you leave the ship, if we do that then the shipowner abroad can hold in chains his seamen as long as he pleases.

SECOND PART—VALIDITY OF THE ACT.

IV.

By section 4 of the Seamen's Act Congress imposed a valid condition upon the entry of foreign vessels into ports of the United States.

A foreign merchant vessel has no vested right to enter our ports. The act of entry signifies acceptance of the conditions imposed.

The power to impose such conditions is an incident to the sovereignty of the Nation. Vattel, Law of Nations (Chitty, ed., 1863), p. 40.

That Congress is empowered to prevent all foreign vessels from entering the ports of the country, as in an embargo, and to admit them only upon conditions within its uncontrolled discretion, is well settled. *Patterson* v. *Bark Eudora*, 190 U. S. 169; *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320.

This power has been exercised by Congress in its absolute discretion from the beginning with reference to the exclusion of merchandise from foreign countries. *Buttfield* v. *Stranahan*, 192 U. S. 470, 492–493; *Weber* v. *Freed*, 239 U. S. 325, 329. Familiar exercise of the power with reference to aliens brought this comment from the court in *Turner* v. *Williams*, 194 U. S. 279, 289:

> Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions on which they may come in.

It seems clear that Congress imposed the wage requirement of section 4 as a condition to the entry of foreign vessels. It knew of the provisions of foreign laws and of the treaties under which matters of wages on foreign vessels were permitted to be settled in this country according to the laws of the treaty nations. It knew also of its power to subject the entry of foreign ships to conditions, from the frequent citation within the legislative halls of *Wildenhus's Case*, 120 U. S. 1, 11, where it is said:

> It is a part of the law of civilized nations that when a merchant vessel of one country

> enters the ports of another for purposes of trade, it subjects itself to the law of the place to which it goes.

It is, of course, unnecessary that Congress label its enactment with the words "This is a condition." It is plain enough from the terms used. This is set at rest by the cases of *Oceanic Steam Nav. Co.*, *supra*, and the *Bark Eudora*, *supra*.

In *Oceanic Steam Navigation Co.* v. *Stranahan*, 214 U. S. 320, the statute was section 9 of the act of March 3, 1903, c. 1012, 32 Stat. 1213, as follows:

> That it shall be unlawful for * * * the owner, master, agent, or consignee of any vessel, to bring to the United States any alien afflicted with a loathsome or with a dangerous contagious disease; and if it shall appear to the satisfaction of the Secretary of the Treasury (Secretary of Commerce and Labor) that any alien so brought to the United States was afflicted with such a disease at the time of foreign embarkation, and that the existence of such disease might have been detected by means of a competent medical examination at such time, such person or transportation company, or the master, agent, owner, or consignee of any such vessel, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of one hundred dollars * * *.

The steamship company sought to recover the fine imposed by the Secretary of Commerce and Labor, which it had paid under protest. The court recognized as apparent that the power to impose the fine

was lodged with the Secretary only for acts performed abroad, namely, the want of competent medical inspection at the point of foreign embarkation, together with the subsequent entry of the vessel within our territory. The court upheld the fine as lawfully imposed and said (p. 342):

> In view of the absolute power of Congress over the right to bring aliens into the United States we think it may not be doubted that the act would be beyond all question constitutional if it forbade the introduction of aliens afflicted with contagious diseases, and, as a condition to the right to bring in aliens, imposed upon every vessel bringing them in, as *a condition of the right to do so*, a penalty for every alien brought to the United States afflicted with the prohibited disease, wholly without reference to when and where the disease originated. It must then follow that the provision contained in the statute is of course valid. * * * [Italics ours.]

The Court made a similar holding in *Patterson* v. *Bark Eudora*, 190 U. S. 169. The statute there involved was section 10 (a) of the act of December 21, 1898, 30 Stat. 755, 763, which provides that it shall be, and is hereby made, unlawful to pay any seaman wages until he has actually earned the same and adds "(f) That this section shall apply as well to foreign vessels as to vessels of the United States." The Court said (p. 178):

> The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the

> nations to which these vessels belong may be withdrawn. Indeed, the implied consent to permit them to enter our harbors may be withdrawn, and if this implied consent may be wholly withdrawn it may be extended upon such terms and conditions as the government sees fit to impose. And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign as well as to domestic vessels. *Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports*, and those conditions the courts are not at liberty to dispense with. [Italics ours.]

Even if the rule that a statute would not be construed to impair the obligation of a contract could be invoked against the United States, it is without any application here. The statute was passed on March 4, 1915, and took effect as to American vessels 8 months, and as to foreign vessels 12 months, after its passage. The world was on notice that such was the law of the United States governing all contracts which were to be performed in whole or in part within the jurisdiction of the United States from and after that date. If after March 4, 1915, a contract was made in England for a voyage, which by special or general clauses provided for a voyage or sojourn within the United States, such contract was made subject to this law and the contracting parties knew that if they entered the United States in pursuance thereof after March 4, 1916, the provisions of this act

constituted a part of the legal relations, *inter partes*, while in the United States, as fully as any provision of the written contract and would overrule the writing if conflicting.

V.

The statute declares a rule of policy of the forum forbidding the enforcement of contracts providing for the payment of wages upon the completion of the voyage or at the discretion of the master.

Whatever may be the rule as to the law governing the validity of a contract—whether the law of the place where made, of the place of performance, or wherever—it is settled that a court may not recognize and enforce an obligation when to do so is contrary to the public policy of the forum.

A recent statement of this rule was made by Mr. Chief Justice White in *Bond* v. *Hume*, 243 U. S. 15. Suit was brought in Texas in connection with the sale on defendant's account of cotton for future delivery upon the New York Cotton Exchange. The contract was valid in New York. A statute of Texas, which made criminally punishable the dealing in futures except under certain conditions, was held not to cover the particular case. The Chief Justice, delivering the opinion of the Court, said (p. 21):

> * * * It is equally rudimentary that an independent State under that principle will not lend the aid of its courts to enforce a contract founded upon a foreign law where to do so would be repugnant to good morals, would lead to disturbance and disorganiza-

> tion of the local municipal law, or in other words violate the public policy of the State where the enforcement of the foreign contract is sought.

And in *The Kensington*, 183 U. S. 263, a contract made in Belgium, valid by the law of Belgium, limiting the right of recovery for loss of baggage to an arbitrary amount, was held unenforceable in the courts of this country, and damage awarded for the full value of the baggage injured. This court said (p. 269):

> As, however, the ticket was finally countersigned in Belgium, and one of the conditions printed on its face provides that "all questions arising hereunder are to be settled according to the Belgium law, with reference to which this contract is made," it is insisted that such law should be applied, as proof was offered showing that the law of Belgium authorized the conditions. The contention amounts to this: Where a contract is made in a foreign country, to be executed at least in part in the United States, the law of the foreign country, either by its own force or in virtue of the agreement of the contracting parties, must be enforced by the courts of the United States, even although to do so requires the violation of the public policy of the United States. To state the proposition is, we think, to answer it.

Whether or not a release to a common carrier from liability for negligence is valid is not a question of moral turpitude. *Fonseca* v. *Cunard Steamship Co.*,

153 Mass. 553. As was further said in *The Kensington*, 183 U. S. 263, p. 270:

> Nor is the suggestion that, because there is no statute expressly prohibiting such contracts, and because it is assumed no offense against morality is committed in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion.

The existence of the policy may be determined from decided cases and general principles. *Oscanyon* v. *Arms Co.*, 103 U. S. 261. It may, however, be declared by legislative act. As said by Mr. Chief Justice White in *Bond* v. *Hume*, *supra*, 243 U. S. 15, 22, 23:

> And finally it is certain that as it is peculiarly within the province of the law-making power to define the public policy of the State, where that power has been exerted in such a way as to manifest that a violation of public policy would result from the enforcement of a foreign contract validly entered into under a foreign law, comity will yield to the manifestation of the legislative will and enforcement will not be permitted.

Indeed, this court has always recognized the peculiar province of the legislature to declare the existence of a rule of public policy. In *Knott* v. *Botany Mills*, 179 U. S. 69, the public policy was settled by the Harter Act. In that case bills of lading signed at Buenos Aires exempted the carrier from liability

for negligence of the master of a British vessel. Libel was filed to recover for damage caused by negligence and the point was raised that the statute did not govern foreign vessels transporting merchandise from foreign ports under bills of lading signed abroad. The exemption clause of the contract was held unenforceable, and the court said (p. 74): "The power of Congress to include such cases in this enactment can not be denied in a court of the United States."

There is, moreover, recent precedent for allowing less than the full value of the services to be recovered. In *The Titanic*, 233 U. S. 718, it was held that Congress may limit the extent of recovery in a court of the United States for an obligation incurred under foreign law. "It is true," said Mr. Justice Holmes, delivering the opinion of the court, "that the foundation for a recovery upon a British tort is an obligation created by British law." He continued:

> (p. 732.) But it also is true that the laws of the forum may decline altogether to enforce that obligation on the ground that it is contrary to the domestic policy, or may decline to enforce it except within such limits as it may impose. *Cuba Railroad Co.* v. *Crosby*, 222 U. S. 473, 478, 480. Dicey, Conflict of Laws, 2d ed. 647. It is competent therefore for Congress to enact that in certain matters belonging to admiralty jurisdiction parties resorting to our courts shall recover only to such extent or in such way as it may mark out. *Butler* v. *Boston & Savannah Steamship Co.*, 130 U. S. 527.

There is, no difference in denying the enforcement of a foreign contract to a plaintiff and to a defendant when invoked as a reply to a statutory right. The validity for any purpose of contracts made in one country in the courts of another depends upon the laws of the latter, comity furnishing the rule in the absence of some statutory provision or conflicting public policy.

There is an analogy in the doctrine of the English law with reference to slavery, whereby if a master and slave enter the country, although slavery be recognized as legal in the country from which they came, the courts will refuse the master all aid to exercise control over his slave, and if the master seeks to exercise control in a manner justifiable only by that relation, will prevent such control. (See authorities cited in dissenting opinion of Mr. Justice Curtis in the *Dred Scott Case*, 19 How. 393, 590–591.)

CONCLUSION.

It is respectfully submitted that section 4 of the seamen's act should be interpreted to include foreign seamen serving under foreign contracts on foreign vessels in harbors of the United States, and that as so interpreted the section is valid.

December, 1919.

ALEX. C. KING,
Solicitor General
F. MYERS,
Attorney, Department of Justice.

○

United States Supreme Court,

OCTOBER TERM, 1919

No. 373

STRATHEARN STEAMSHIP COMPANY, Limited,

Petitioner,

—against—

JOHN DILLON,

Respondent.

BRIEF FOR BRITISH EMBASSY.

FREDERIC R. COUDERT,
HOWARD THAYER KINGSBURY,
Counsel for BRITISH EMBASSY,
Amici Curiae,
2 Rector Street,
New York City, N. Y.

INDEX.

AUTHORITIES CITED.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919.

No. 373

STRATHEARN STEAMSHIP COMPANY, LTD.,
Petitioner,

versus

JOHN DILLON,
Respondent.

On Writ of *Certiorari* to the United States Circuit Court of Appeals for the Fifth Circuit.

Brief on Behalf of John Dillon, Respondent.

This is an action brought under the Seamen's Act of March 4th, 1915, and involves the construction and validity of Section 4 of that Act, amending Section 4530 of the Revised Statutes of the United States, which reads as follows:

> "Section 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the Master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the

voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void: PROVIDED, such a demand shall not be made before the expiration of, nor oftener than once in five days. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. * * AND PROVIDED FURTHER, that this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

The respondent, Dillon, was a British subject, and shipped at Liverpool, on a British vessel on May 8th, 1916. The shipping articles which he signed provided for a voyage of not exceeding three years duration, commencing at Liverpool and ending at such port in the United Kingdom as might be required by the master, and included ports of the United States. Wages were fixed by the articles, and made payable at the termination of the voyage. At the time of the demand hereinafter referred to, the period of the voyage had not been completed. The articles were signed on or about the 8th day of May, 1916, and contained the provision "no cash shall be advanced abroad, or liberty granted, other than at the pleasure of the master." It is conceded that the provisions of the contract with reference to the payment of wages, are valid by the laws of Great Britain.

On July 31st, 1916, the ship arrived at the port of Pensacola, Fla., and on August 2nd following, while the ship was

in this port, the respondent, still in the employ of the ship, demanded of the master one-half part of his wages which he had then earned. The payment was refused.

Prior to the time of this demand, nothing had been paid to Dillon for a period of about two months; and following the refusal of the master to comply with the demand for half wages, the respondent filed, in the District Court of the United States, his libel against the ship, claiming $125 the amount of wages earned at the time his demand and the refusal of payment, were made. The District Court found against the respondent on the ground that the demand was premature. The Circuit Court of Appeals reversed this decision holding that the demand was in time; that Section 4530 was applicable to the case and, thus construed, was a valid exercise of the powers of Congress.

The questions presented to this Court for determination are:

1. Does the provision relating to the payment of one-half part of a seamen's wages on demand contained in Section 4530 R. S., as amended by Section 4 of the Seamen's Act, apply to a foreign seaman on a foreign vessel while in a port of the United States, notwithstanding a stipulation to the contrary in the contract of employment, valid by the laws of the country where made?

2. If so, is Section 4530 in this respect a valid exercise of the power of Congress?

3. Was the demand for payment of half wages premature?

I.

The proviso in Section 4530 as amended making the provisions relating to half wages applicable to seamen on foreign vessels, is plain and unambiguous, and requires no construction. The word "seamen" is generic, and plainly includes those of every nationality. There being no ambiguity in the statute resort to the title or other extrinsic matters to affect the meaning of the word, is precluded.

Grammatically, the proviso is sufficiently comprehensive to include foreign, as well as American seamen. The word "seamen" is a word of general description and unless the context indicates a contrary intent on the part of Congress, may not be restricted by construction to a narrower meaning. The language of the proviso is that the section (4530) "shall apply to seamen on foreign vessels while in harbors of the United States." There is nothing in the context which suggests that this word "seamen" was used otherwise than in its generic sense as embracing seamen of every class and nationality. If the Act did not bear a title this conclusion, it would seem, would be conceded by the petitioner. The title of the Act is "An Act to promote the welfare of American seamen, etc.", and it is urged that this shows that Congress intended the word "seamen" in the proviso to apply to American seamen alone. This contention, however, is exactly opposed to the rule established by repeated decisions of this Court. To hold that the word "seamen" in the proviso includes all seamen, is not to extend its meaning by construction, but it is to refuse to *narrow*

its meaning by construction. It is not the respondent who seeks to extend by construction the meaning of the word, but the petitioner who seeks by construction to restrict its meaning, by appealing to the title, a thing extrinsic to the statute itself. In case of conflict between the words of the statute and the words of the title, it is the former, and not the latter, which controls. The ambiguity, if any exists, is not in the context of the statute but in the title which is not a substantive part of the law. Resort to extrinsic aid of this character in the construction of a statute is permissible only where it is fairly succeptible of different constructions. *Price v. Forrest*, 173 U. S. 410, 437.

In *United States v. Fisher*, 2 Cranch. 358, 566, this Court said:

> "Where the intent is plain nothing is left to construction. Where the mind labors to discover the design of the Legislature it seizes upon everything from which aid may be derived; and in such case the title claims a degree of notice and will have its due share of consideration."

In *United States v. O. & C. R. Co.*, 164 U. S. 526, 541, the Court said:

> "The title is no part of an act and cannot enlarge or confer powers or control the words of the Act unless they are doubtful or ambiguous. * * * The ambiguity must be in the context and not in the title to render the latter of any avail."

In *Cornell v. Coyne*, 192 U. S. 418, 530, the Court said:

> "The title of the act is referred to only in cases of doubt or ambiguity."
>
> "The title of an act, especially an Act of Congress,

> is generally of doubtful value as an aid to the construction of the act itself." *Hadden v. Barney*, 5 Wall 107, 110.

In *Hamilton v. Rathbone*, 175 U. S. 414, 421, there was involved the meaning of the word "property", and the Court holding that this word literally "includes every right and interest which a person has in lands and chattels and is broad enough to include everything which one person can own and transfer to another", and that this meaning can not be restricted by reference to prior acts, of which the Act in question constituted a revision, said:

> "* * * The province of construction lies wholly within the domain of ambiguity. * * * Prior acts may be resorted to to **solve** but not to **create** an ambiguity. If Section 728 were an original Act there would be no room for construction. It is only by calling in the aid of a prior act that it becomes possible to throw a doubt upon its proper interpretation."

There is no doubtful meaning in the words of the proviso under consideration. The doubt suggested by petitioner is not one arising naturally, but one artificially imported into the statute by appealing to the difference claimed to exist between the language of the title and the language of the act. The question is, therefore, strikingly analogous to the one presented in the case last cited, for the title of this act is invoked not to **solve** but to **create** an ambiguity, a proceeding expressly forbidden by the unbroken decisions of this Court.

But conceding, for the sake of argument, that it was the sole intent of Congress, by the law in question, to promote the welfare of American seamen only, it does not follow

that the provision giving foreign seamen in an American harbor the same right to demand and receive half wages, is not in furtherance of this purpose. The effect of limiting the provision to American seamen might well be to induce the employment of foreign seamen to the exclusion of American seamen by reason of the liability to pay half wages in the latter case, and in the absence of such liability in the former case and thus the effort of Congress to promote the welfare of the American seaman on foreign vessels by giving him half his wages on demand, be nullified by his exclusion from employment on such vessels altogether. Congress may well have reasoned that the welfare of the American seamen could be assured only by putting the foreign seamen upon the same level of equality in this respect. See the opinion of the Circuit Court of Appeals in the instant case, 256 Fed. 631.

But the force of the contention respecting the interpretative effect of the title completely vanishes when we consider not this single and over-emphasized clause alone, but the title as a whole. It is as follows:

> "An act to promote the welfare of American Seamen in the Merchant Marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

Not only, then, is it an act "to promote the welfare of American seamen" but it is an act "to abolish arrest and imprisonment as a penalty for desertion." Seamen by this Act are given the status of free workmen in other forms

of employment. They may quit their employment as other workmen may quit, without incurring the penalty of imprisonment for so doing. Upon entering a port of the United States the foreign seaman, unwilling to continue his service, is no longer held to a condition of involuntary servitude, but is free to go when and where he pleases. The value of this new freedom would be greatly reduced if the seaman were thereby set adrift in a strange harbor without a penny in his pocket. That this provision for the payment of half wages was inserted as an aid to the provisions of the law abolishing imprisonment for desertion, quite as much as for any other purpose, is made clear from a consideration of the statements of the congressional committee in reporting the bill.

In a report of the Committee on Merchant Marine & Fisheries to accompany S. 136 in the House of Representatives, June 10, 1914, (63 Congress, Second Session, No. 888, at page 10), it is said:

> "It is claimed that by making the provisions of Section 8 of the Senate Bill and Section 4 of the committee substitute apply to foreign ships it will tend to equalize the operating expenses of vessels. It is also claimed that the provisions of this bill abolishing arrest for desertion would be largely annulled if the foreign shipowner may by the terms of his contract deny the seaman the right to receive in our ports any part of the wages earned by him; that while the deserting seaman would not be subject to arrest, he would be compelled, if he deserted, to do so without a penny in hand to buy bread or procure a night's lodging; and it is claimed also if American vessels are subject to the provisions allow-

ing seamen to demand half their wages earned, while foreign vessels are not, the shipowner might and probably would put his ship under a foreign flag to avoid this obligation."

In the minority views in Part 2, of the same report, it is said:

> "These foreign shipowners will always have the right of making any kind of contracts outside of American jurisdiction which they may be permitted to make by the laws under which the contracts are made, but the United States must not be used to enforce such contracts or to protect shipowners in such exploitation because the inevitable result of such practice in American ports is to lower the standard of labor on vessels in such ports." Page 1.

> "The second proviso makes the section applicable to foreign vessels while in harbors of the United States, and is necessary in order that wages due the seamen shall not be withheld from him with the effect of compelling him to remain with the vessel against his will. It is a necessary part of the purpose to equalize the wage cost in foreign and American vessels trading from and to ports of the United States." Page 6.

It is not disputed that the proviso applies to foreign vessels, but it is insisted that the application should be restricted to American seamen on these vessels. It is obvious that on foreign vessels almost certainly, foreign seamen will greatly predominate, and Congress must be credited with a knowledge of this fact. Knowing this, it would be singular if Congress had used a word of such comprehensive application, a word naturally conveying to the ordinary

mind the understanding that every class of seamen was included, when it intended only to include one class. If Congress intended to provide for only the occasional American seaman, and to exclude from the provision the far more numerous class of foreign seaman, it is difficult to understand why this was not said in plain words.

Not only is there nothing in the context to indicate that Congress did not intend by the use of the word "seamen" to exclude foreign seamen, a thing which, as we have seen, must exist to justify the court in restricting the otherwise broad application of the term—but the context is quite to the contrary. The language of the proviso already discussed is followed by the words "and the courts of the United States shall be open to such seamen for its enforcement." Obviously, if the proviso was intended to apply only to American seamen there could be no purpose in this last quoted provision. The courts of the United States were already indubitably open in such cases.

The Falls of Keltic, 114 Fed. 357.

The Epsom, 227 Fed. 161.

In the latter case the Court said:

> "The right to invoke the jurisdiction of the federal courts by a citizen of the United States for the purpose of determining a dispute under shipping articles with a foreign vessel, is a constitutional right which the courts cannot deny. The people have ordained by the Constitution that judicial power shall be vested in the national courts, and that the judicial power shall extend to all cases of admiralty and maritime jurisdiction. These provisions without doubt are for the purpose of creating a tri-

> bunal where a citizen of the United States may, as a matter of right, seek redress of wrongs cognizable in admiralty and enforce legal rights. This may not be denied."

See also *The Neck*, 138 Fed. 147.

The only doubt, therefore, which there was the slightest necessity of removing, was in the case of the foreign seaman. The jurisdiction in that case, while it undoubtedly exists (*Belgenland*, 114 U. S. 364) is still to be exercised at the discretion of the Court, still more or less subject to the interfering power of the consul, and the qualifying force of treaty stipulation. *The Topsy*, 44 Fed. 631, 635. However effective to that end it may be, it seems very clear that the provision now under discussion was inserted with a view of removing all such restrictions upon, or doubts affecting the jurisdiction of the courts in cases brought by foreign seamen. It was in this view, and for this purpose, in part, that Section 10 of the Act provides for the abrogation of conflicting treaty provisions. *The Talus*, 248 U. S. 185. There was no reason for Congress to be solicitous respecting the right of American seamen to invoke the jurisdiction of the courts of the United States. Congress, in inserting the provision, could have had in mind only foreign seamen.

It is insisted, however, that the decisions of this Court in *The Talus*, *The Rhine*, and *The Windrush*, 248 U. S. 185, 205, are of controlling application, upon the question now under consideration, and that the lower court in deciding the instant case apparently ignored them. There is little support for this conclusion when we remember that the

same Court which decided the instant case also originally decided the *Talus*, and that the decisions of this Court and that Court, in that case, are in complete harmony. That the lower Court had its own decision clearly in mind must be taken for granted. That it likewise was not unmindful of the decisions of this Court is established by the fact that a short time prior to the disposition of the instant case these decisions were referred to and followed by that Court in *The Baltic*, 256 Fed. 95. It would seem, therefore, to be manifest that the lower court did consider the decisions referred to and its determination of the instant case embodies the conclusion of that Court that they were not applicable, a conclusion which was clearly warranted, as we shall presently undertake to show.

What is it that was decided by this Court in those cases? The law involved was Section 10a of the "Seamen's Act", which declares it to be unlawful to pay any seaman wages in advance of the time when he has actually earned the same, and which penalizes such payment with fine and imprisonment. Payment of advance wages, it is provided, shall not absolve the ship from full payment of wages after the same shall have been actually earned, and shall be no defense to an action for their recovery. This section is made applicable to foreign vessels "while in waters of the United States". The seamen whose rights were involved in those cases were foreigners on foreign ships, and had been paid advance wages not in the waters of the United States but in foreign ports. This Court, answering its own question, "How far was this intended to apply to foreign vessels?" says:

> "We find the answer, if we look to the language of the act itself. It reads that this section shall apply to foreign vessels while in the waters of the United States."

In the interpretation of this section the Court found no necessity for appealing to extrinsic aids. The words of the statute alone were considered and the Court found the intent of Congress plainly apparent in the language of the Act. The thing forbidden was the payment of advance wages and a penalty was prescribed for a violation. The Court held that this did not apply to payments made in the foreign port for Congress could not have meant to forbid the doing of an act in a foreign country, much less have meant to visit the doing of it with criminal penalties. The clear intention of Congress was that a general inhibition against the payment of wages should apply to vessels of the United States only, since otherwise there would have been no necessity of providing that it should have a limited application to foreign vessels, namely, while they were in waters of the United States. The doing of this specific act was, therefore, prohibited in all cases of vessels of the United States, and the effect of making the section applicable to foreign vessels while in waters of the United States, was to forbid the doing of this specific thing, namely, the advance payment of wages while, and only while, those foreign vessels were in the waters of the United States. The Statute did not undertake to deal with the matter while the foreign vessel was in a foreign port.

The foregoing, we think, constitutes a fair statement of the majority opinions, or is fairly deducible therefrom. But even the conclusion reached by the Court, it may be

said in passing, was fairly debatable, since four members of the court joined in a dissenting opinion.

The section now under consideration, presents a wholly different situation. This section confers a right upon every seaman on a vessel of the United States, to receive, on demand, one-half part of his wages then earned, notwithstanding any stipulation in the contract to the contrary.

This is made applicable to seamen on foreign vessels "while in the harbors of the United States." What, then, is the right conferred upon such seamen by this proviso? It is to receive from the master of a foreign ship half wages on demand, notwithstanding any stipulation in the contract to the contrary, **provided the ship be, at the time when the right is sought to be exercised, in a harbor of the United States.** Congress here has neither undertaken to penalize nor make unlawful any act committed, or to confer any right to be exercised within a foreign jurisdiction, and the decision of the lower court in favor of respondent does not involve any such result. The court below simply held that a foreign seaman on a foreign ship, while both were in the territory of the United States, was entitled to receive on demand, half his wages then earned notwithstanding any stipulation in the contract to the contrary. The operation of the law was strictly confined to the territory of the United States. There was no attempt to give our law effect within a foreign jurisdiction. There was simply a refusal to allow a foreign contract, valid under the law of the country where made, to nullify a statute of the United States sought to be enforced in a court of the United States. The decision does not give extra-territorial operation to our law.

Rather it refuses to give extra-territorial effect to a foreign law.

It is suggested by petitioner that the proviso may be construed so as to apply only to wages actually earned in a harbor of the United States. Such a construction would be altogether fanciful. The only possible inquiry is who are meant to be included by the proviso under the term "seamen"? When this is ascertained the provisions of the section by the unqualified language of the proviso, are made applicable to such persons. The right conferred by the section upon the seamen described therein, is to receive half wages **wherever earned.** To make this section applicable to other seamen is to give them the same, and not some other, or different, or inferior right. If **foreign** seamen are meant to be included their rights are to be measured by the provisions of the section precisely as the rights of the seamen first described are to be measured by them. To hold otherwise, is to say that **these** provisions are not applicable in the face of the plain declaration of the proviso that they are.

II.

The proviso, thus construed, is valid and constitutional.

The effect of the legislation is to give a foreign seaman upon a foreign vessel while in a harbor of the United States the right to receive on demand from the master of the vessel one-half part of his wages then earned, and to open the courts of the United States to such seamen for the enforcement of the right. Any stipulation in his contract to the contrary is declared to be void. The petitioner apparently

does not challenge the power of Congress to confer the right in the absence of contract provisions to the contrary, but it is denied that Congress has the power to render the legislation effective against such provisions contained in a foreign contract valid where made. If this view be sustained the result is that a foreign seaman will be authorized to go into a court of the United States to enforce a right given him by a federal statute, but the effect of the statute will be nullified by the production of a foreign contract containing countervailing provisions. It is contended, in the language of this Court (*The Appolon*, 9 Wheat. 362) that "the laws of no nation can justly extend beyond its own territories except so far as regards its own citizens"; and that is quite true. This, however, is far from saying that our laws may not affect—even vitally affect—engagements and contracts made in other countries by the citizens or subjects thereof whenever these engagements or contracts are presented in our courts for judicial action. The sentence following the language quoted shows what the Court had in mind in that case:

> "They (the laws) can have no force to control the sovereignty or rights of any other nation within its own jurisdiction."

The law now being considered has no such effect. It does not operate within the jurisdiction of a foreign country but its operation is confined to our territory. It affects acts which have taken place in a foreign jurisdiction only by way of preventing these acts from rendering ineffective our own law within our own jurisdiction.

Again, it is insisted that the authorities cited by the lower Court go no further than to hold that the courts may refuse their aid to the affirmative enforcement of a foreign contract contrary to our law or policy, but constitute no warrant for holding that Congress may create a liability in contravention of a contract valid where made. The distinction sought to be drawn is one of words rather than of substance. Why have the courts refused to render judgment affirmatively enforcing such contracts? It is because "neither by comity nor by the will of the contracting parties can the public policy of a country be set at naught." *The Kensington*, 183 U. S. 263, 269.

Petitioner's contention confuses the application which was made of the principle in the cases referred to, with the principle itself. The principle extends further than the application, and is not affected by the position of the parties on the record. The courts simply refuse to give effect to a contract which contravenes the law or policy of the forum, and are not concerned with the incidental circumstance that their aid has been invoked by the defendant rather than by the plaintiff. The doctrine as stated by Chancellor Kent, is that:

> "* * * No people are bound or ought to enforce or hold valid in their courts of justice, any contract which is injurious to their public rights or offends their morals or contravenes their policy or violates a public law." 2 *Kent's Comm.* 458.

But, conceding the contention of petitioner literally, if a foreign seaman invoke the jurisdiction of a court of the United States to grant him the relief accorded by the stat-

ute, and the court hold that a foreign contract set up by the defendant constitutes a bar to such relief, what is this but an enforcement of the contract against the seaman?

The effect of the statute upon the foreign contract extends no further than the proviso itself declares. The provisions of the contract which conflict with the law are void only in the event, and upon the contingency, of a demand for half wages while the ship is in a harbor of the United States. As against a demand made elsewhere the contract remains enforceable even in a court of the United States in any action where the jurisdiction of such court may be properly invoked, for the provision is precise and definite that the section "shall apply to foreign seamen on foreign vessels **while in the harbors of the United States.**" The act does not affect such foregin contracts generally but only when they come into conflict with the right given to a foreign seaman in pursuance of the public policy of the United States as declared by its laws.

Even if Congress were prohibited, as the State Legislatures are prohibited, from passing laws impairing the obligation of contracts, this case would not fall within the rule, since, all other considerations aside, the contract in question was made subsequently to the effective date of the statute. The statute was passed March 4th, 1915, and became operative as to foreign ships twelve months later, while the contract is dated May 8th, 1916. For the same reason it becomes unnecessary to consider the contention of petitioner that upon the construction of the statute established by the lower court petitioner has been "deprived of property without due process of law", by taking away a

vested right under a contract. As a statute cannot impair the obligation of a contract which was not in existence when the statute was passed, so a statute cannot be said to take away a vested right under a contract which was not in existence when the statute was passed.

It is true that the liberty guaranteed by the Constitution includes the right to make contracts, but that right is a qualified, not an absolute, one. It is a right which is always subject to the effective exercise of the powers of Congress. It may be restrained whenever it will conflict with public policy. That the legislation now in question, insofar as it relates to the right of contract, is within the power of Congress, is abundantly established by the decisions of this Court. **Chicago** *B. & Q. R. Co. v. McGuire,* 219 U. S. 549, and cases cited. When the power of Congress to enact the substantive provision conferring the right to receive half wages is conceded or established, the power to invalidate all contracts which nullify or interfere with the right follows as a necessary corollary, and while the facts in this case do not make it necessary to go thus far, it may be said in passing that the power of Congress in this respect embraces not only future contracts but extends to contracts already in existence as well. *L. & N. Ry. Co. v. Mottley,* 219 U. S. 467, 482.

That the liberty of contract contemplated by the Constitution is not infringed by the statute in question is specifically established by the decision of this Court in the case of *The Eudora,* where the necessity and justification for such legislation is clearly and strongly set forth. *Patterson v. The Eudora,* 190 U. S. 169, 173. The provisions of the

statute may find warrant in the power of Congress to regulate commerce, or may find it in the authority of Congress to amend the maritime law of the country, an authority which is co-extensive with the law. *Ex parte Garnett*, 141 U. S. 1, 12; *Southern Pacific Co. v. Jensen*, 244 U. S. 205, and cases cited. The effect of the statute when applied to foreign vessels, is to impose its provisions upon such vessels as a condition precedent to their entry into our ports. That the imposition of such a condition is within the legitimate authority of Congress may not be doubted.

In *Patterson v. The Eudora*, *supra*, this Court said:

> "The implied consent of this government to leave jurisdiction over the internal affairs of foreign merchant vessels in our harbors to the nations to which these vessels belong may be withdrawn. Indeed, the implied consent to permit them to enter our harbor may be withdrawn, and if this implied consent may be wholly withdrawn, it may be extended upon such terms and conditions as the government sees fit to impose. And this legislation, as plainly as words can make it, imposes these conditions upon the shipment of sailors in our harbors, and declares that they are applicable to foreign, as well as domestic vessels * * * Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions the courts are not at liberty to dispense with. The interests of our own shipping require this. It is well said by counsel for the government in the brief which he was given leave to file:
>
> "'Moreover, as 90 per cent, of all commerce in our ports is conducted in foreign vessels, it must

be obvious that their exemption from these shipping laws will go far to embarrass domestic vessels in obtaining their quota of seamen. To the average sailor it is a consideration while in port to have his wages in part prepaid; and if, in a large port like New York, 90 per cent of the vessels are permitted to prepay such seamen as ship upon them, and the other 10 per cent being American vessels cannot thus prepay, it will be exceedingly difficult for American vessels to obtain crews. This practical consideration, presumably appealed to Congress and fully justified the provision herein contained.'

"We are of the opinion that it is within the power of Congress to protect all sailors shipping in our ports on vessels engaged in foreign or interstate commerce, whether they belong to citizens of this country or of a foreign nation, and that our courts are bound to enforce these provisions in respect to foreign, equally with domestic vessels."

In *Wildenhus' case*, 120 U. S .1, Chief Justice Waite said:

"It is a part of the law of civilized nations that when a merchant vessel of one country enters the ports of another for the purposes of trade, it subjects itself to the law of the place to which it goes, unless, by treaty or otherwise, the two countries have come to some different understanding or agreement."

In *The Exchange v. McFadden*, 7 Cranch 116, Chief Justice Marshall said:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitaton not imposed by itself.

Any restriction upon it deriving validity from an external source would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself. They can flow from no other legitimate source. This consent may be either express or implied. In the latter case, it is less determinate, exposed more to the uncertainties of construction; but, if understood not less obligatory.' And again, after holding it 'to be a principle of public law that national ships of war entering the port of a friendly power, open for their reception, are to be considered as exempted, by the consent of that power, from its jurisdiction,' he added:

"Without doubt, the sovereign of the place is capable of destroying this implication. He may claim and exercise jurisdiction, either by employing force or by subjecting such vessels to the ordinary tribunals."

A distinction is sought to be made by counsel because in *The Eudora case* the advance of wages to seamen was effected in the harbor of Portland, Maine, whereas the shipping articles in the case at bar were signed in Liverpool. The fundamental principle involved, however, is the same and while it may be true as a general rule that the *lex loci* governs and it is also true that the intention of the parties to a contract will be sought out and enforced, both of these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by the will of con-

tracting parties can the public policy of a country be set at naught.

Story, Confl. of Laws, Secs. 38, 244. *The Kensington*, 183 U. S. 263.

In *The Kensington*, where a contract had been entered into in Belgium and it was stipulated that "All questions arising hereunder are to be settled according to the Belgium law with reference to which this contract is made", it was insisted that the law of Belgium should be applied and it was shown that the law of Belgium authorized the conditions. This Court said:

> "The contention amounts to this: Where a contract is made in a foreign country to be executed at least in part in the United States, the law of the foreign country either by its own enforcement or in virtue of the agreement of the contracting parties, must be enforced by the courts of the United States even although to do so requires the violation of the public policy of the United States. To state the proposition is, we think, to answer it. It is true, as a general rule, that the *lex loci* governs, and it is also true that the intention of the parties to a contract will be sought out and enforced. But both these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by the will of contracting parties can the public policy of a country be set at naught."
>
> *Story, Confl. L.*, Secs. 38, 244.
>
> "While, as said in *Knott v. Botany Worsted Mills*, the previous decisions of this Court have not called for the application of the rule of public policy to

the precise question here arising, nevertheless, that it must be here enforced is substantially determined by the previous adjudications of this Court. In *Liverpool & G. W. Steam Co. v. Phoenix Ins. Co.*, 129 U. S. 397, 32 L. Ed. 788, 9 Sup. Ct. Rep. 469, the question arose whether conditions exempting a carrier from responsibility for loss caused by the neglect of himself or his servants could be enforced in the courts of the United States, the bill of lading having been issued in New York by a British ship for goods consigned to England. Despite the fact that conditions exempting from responsibility for loss arising from negligence were valid by the laws of New York, and would have been upheld in the courts of the State, it was decided that, in view of the rule of public policy applied by the Courts of the United States, effect would not be given to the conditions. In the very nature of things, the premise, upon which this decision must rest, is controlling here unless it be said that a contract made in a foreign country, to be executed in part in the United States, is more potential to overthrow the public policy, enforced in the courts of the United States, than would be a similar contract validly made, in one of the States of the Union. Nor is the suggestion that because there is no statute expressly prohibiting such contracts, and because it is assumed no offense against morality is committed in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend is the criterion. The precise question has been carefully considered and decided in the District Courts of the United States. In *The Guildhall*, 58 Fed. 796, it was held that a stipulation in a bill of

lading issued at Rotterdam on goods destined to New York, exempting the carrier from liability for negligence, would not be enforced in the courts of the United States, although such a condition was valid under the law of Holland. In *The Glenmavis*, 69 Fed. 472, the same rule was applied to a bill of lading issued in Germany by a British ship, for goods consigned to Philadelphia."

The public policy of the government is to be found in its statutes, and when the lawmaking power speaks upon a particular subject over which it has constitutional power to legislate, public policy in such a case is what the statute enacts.

United States v. Trans. Mo. Freight Association, 116 U. S. 290.

The statute as applied to foreign seamen on foreign vessels shipped in foreign ports under a contract valid where made, whereby such seamen are not entitled to payment of their wages until the end of the voyage, whenever these vessels enter our ports to load or deliver cargo and while in the harbors of the United States, is, therefore, clearly within the legislative powers of the United States and does not violate the constitutional provisions against the deprivation of property without due process of law.

III.

The right to demand half wages at every port where the vessel shall load or deliver cargo arises upon the arrival of the vessel in such a port, provided five days have elapsed to be computed from the last pay-

ment or from the commencement of the voyage and not from the arrival of the vessel in port.

The language of the statute with respect to the time when the five days of the proviso shall commence to run is, we think, free from all ambiguity; the intent to make the five days run from the commencement of the voyage and not from the arrival of the vessel in port, is, we think, so plain that there is nothing left for construction. In *The Talus*, both the District Court, 242 Fed. Rep. 954, and the Circuit Court of Appeals, 248 Fed. 670, so held.

The Court of Appeals said:

> "We think the plain purpose of Congress was to allow the seaman the benefit of half of his earned wages, less payments, upon each occasion upon which the statute permits him to demand them from the commencement of the voyage to the time of demand and that the words of the statute 'then earned' are not limited by the succeeding words 'at every port' but that the function of the latter is to describe the place of legal demand only. Absence of punctuation between the words 'then earned' and the words 'at every port' is of little persuasiveness as against the evident intent of Congress. The probable brief duration of a ship's stay in intermediate ports and the small amount of probable wages there earned by the seamen, would make the required payments of little value to them."

The District Court:

> "I do not think the vessel must be in port five days before the seaman can make his demand provided there has been five days or more of service by the sailor since he signed. I think the words 'provided

> such demand shall not be made before the expiration nor oftener than once in five days' means 'shall not be made before the expiration of five days of service during which wages were earned' and not 'oftener than once in each five days thereafter.' "

In *The Delagoa*, 244 Fed. 835, the District Court used this language:

> "This cannot be construed to mean that he, the seaman, is entitled to only one-half of the wages which he earned in that port nor that the five days period must have expired in port before making the demand. It apparently is intended to provide that no demand shall be made less than five days after the last preceding demand."

In this case the Circuit Court, 256 F. 633, said:

> "Evidently the intention was that such a demand should not have the effect given to it by the statute if it is made within five days after the voyage has commenced, or if made sooner than five days after the making of a previous demand contemplated by the statute. The appellant's demand was not premature."

But, if this proviso needs construction, it is elementary that it must be given that construction which will **carry into effect,** and not that construction which will **defeat** the intention, purpose and object of the legislator.

U. S. v. Gooding, 12 Wheat. 46.
Vanderbilt v. Erdman, 196 U. S. 480.

It is also elementary that every part of a statute must be construed with reference to every other part and every word and phrase in connection with its context and that

that construction must be sought which will give effect to its every word though ambiguous.

Bend v. Holt, 13 Peters 263.

Blair v. Chicago, 201 U. S. 400.

The manifest intention and purpose of the law was to include within its beneficial provisions "every" seaman on vessels which should load or deliver cargo at "every" port of the United States, and not to exclude from the operation of the statute a large majority of seamen, for, the language of the statute is "every seaman on board, etc.," and in "every port" where the vessel shall load or deliver cargo.

The construction which requires that the five days be computed from the arrival of the vessel in port and not from the commencement of the voyage, divides the seamen into two classes; viz., the more numerous class comprising seamen on vessels which remain in port less than five days, which it eliminates entirely from the benefit of the statute; the less numerous class comprising seamen on vessels which remain in port longer than five days, which it alone includes, but, as to which the provision of the law becomes in a great measure nugatory, because, while the purpose which Congress had in view in conferring upon the seamen the privilege of receiving their wages at "every" port was that they might use same while in port, that construction allows them half wages, when they are about to depart from the port. Hence, such a construction clearly defeats the object which Congress had in view, not only by eliminating the more numerous class entirely but by rendering

the provision of the law as to the less numerous class in a great measure nugatory.

The construction of the statute which computes the five days from the commencement of the voyage on the other hand, extends its benefits to "every" seaman in "every" port, the only restriction being that he should receive his wages not sooner than five days after the commencement of the voyage or after the last payment, which carries out fully the purpose of the statute.

In the case of the *"Italier"*, 257 Fed. Rep. 714, the Court argues thus: seamen on foreign vessels have no rights under this statute until they arrive in a harbor of the United States, therefore, the five-day period begins to run not from the commencement of the voyage, nor from the last payment, but from the arrival of the vessel in port. This reasoning is manifestly unsound and the error proceeds from the fact that the Court attempts to differentiate the limitation or qualification of the right to demand wages from the right itself.

The argument of the Court concedes by implication that, if the proviso as to the five-day period were eliminated from the statute, foreign seamen would have the right to demand half wages then earned on the arrival of the vessel in port. But, the Court fails to recognize that the proviso qualifies the right; that it places a limitation upon it and thus makes it an inferior or lesser right. If, therefore Congress had the power to confer this right, without the limitation of the five-day period, that is to say, if it had the power to confer the superior or greater right, *a fortiori*, Congress had the power to confer the lesser or inferior right, otherwise it

would not be absurd to say that the part is greater than the whole.

For the same reason if Congress has the power to impose upon the Master the obligation to pay half of the wages then earned at every port, Congress necessarily is vested with the power to impose a limitation upon this obligation and make it an inferior obligation.

CONCLUSION.

We respectfully submit, therefore, that the statute is applicable to the case at bar; that, as so applicable, it is a valid exercise of the power of Congress; that the demand for payment of half wages was not premature; and that, therefore, there should be judgment in favor of respondent affirming the judgment of the Circuit Court of Appeals.

Respectfully submitted,

GEORGE SUTHERLAND,

SILAS B. AXTELL,

W. J. WAGUESPACK,

Counsel for Respondent.

November 26th, 1919.